

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

DAVID E. TURNER,

Petitioner,

vs.

WARDEN, CHILLICOTHE
CORRECTIONAL INSTITUTION,

Respondent.

Case No. 3:10cv117

JUDGE WALTER HERBERT RICE

DECISION AND ENTRY ADOPTING REPORT AND RECOMMENDATIONS
OF THE UNITED STATES MAGISTRATE JUDGE (DOC. #7) IN THEIR
ENTIRETY AND OVERRULING PETITIONER'S OBJECTIONS THERETO
(DOC. #9); RESPONDENT'S MOTION TO DISMISS (DOC. #5)
SUSTAINED; JUDGMENT TO ENTER IN FAVOR OF RESPONDENT AND
AGAINST PETITIONER HEREIN; ANTICIPATED REQUEST FOR
CERTIFICATE OF APPEALABILITY AND REQUEST TO APPEAL IN
FORMA PAUPERIS DENIED; TERMINATION ENTRY

Based upon the reasoning and citations of authority set forth in the Report and Recommendations of the United States Magistrate Judge, filed January 12, 2011 (Doc. #7), and the reasoning and citations of authority set forth in the Respondent's Motion to Dismiss (Doc. #5), as well as upon a thorough de novo review of this Court's file and the applicable law, said Report and Recommendations are adopted in their entirety. Petitioner's Objections to said judicial filing (Doc. #9) are overruled. Respondent's Motion to Dismiss (Doc. #5) is sustained. Judgment will be ordered

entered in favor of Respondent and against Petitioner, dismissing the within Petition for Writ of Habeas Corpus, with prejudice, on each of the five grounds for relief.

In ruling as aforesaid, the Court makes the following, non-exclusive, observations:

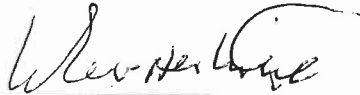
1. None of Petitioner's five claims or branches are cognizable in federal habeas corpus. Petitioner's manifest weight of the evidence argument (as opposed to one challenging the sufficiency of the evidence which is not raised herein) is a matter of state law. Claims two, three and four, contesting the manner in which certain evidence was seized, is barred from federal habeas corpus review, under the procedural facts of the captioned cause, given that the state courts provided the opportunity for a full and fair litigation of Petitioner's Fourth Amendment claims, pursuant to Stone v. Powell, 428 U.S. 465 (1976). Petitioner's fifth claim for relief, challenging the constitutionality of the Adam Walsh Act, codified under Ohio law, is likewise non-cognizable in federal habeas corpus, given that the sex offender registration laws are but a collateral consequence of his conviction and do not, in and of themselves, render the Petitioner in custody, sufficient to invoke the federal habeas corpus jurisdiction of this Court.

Given that Petitioner has failed to make a substantial showing of the denial of

a constitutional right and, further, that the Court's decision herein would not be debatable among jurists of reason, Petitioner is denied a certificate of appealability. Moreover, given that any appeal from this Court's decision would be objectively frivolous, Petitioner is denied the ability to appeal in forma pauperis.

The captioned cause is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

March 17, 2011



WALTER HERBERT RICE
UNITED STATES DISTRICT JUDGE

Copies to:

Counsel of record